

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**This filing relates to the
Commonwealth.**

**REPLY OF THE COMMONWEALTH OF PUERTO RICO TO RESPONSE FILED BY
CARLOS M. FLORES SÁNCHEZ [ECF NO. 16346] TO THE THREE HUNDRED
NINTH OMNIBUS OBJECTION (SUBSTANTIVE) OF THE COMMONWEALTH OF
PUERTO RICO TO CLAIMS THAT ARE PARTIALLY DEFICIENT AND PARTIALLY
BASED ON GDB BONDS**

To the Honorable United States District Judge Laura Taylor Swain:

The Commonwealth of Puerto Rico (the “Commonwealth” or the “Debtor”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the sole Title III representative of the Debtor pursuant to section 315(b) of the *Puerto Rico*

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”, and together with the Commonwealth, COFINA, HTA, ERS, and PREPA, the “Debtors”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Oversight, Management, and Economic Stability Act (“PROMESA”),² files this reply (the “Reply”) to the response [ECF No. 16346] (the “Response”) filed by claimant Carlos M. Flores Sánchez (“Flores Sánchez”) to the *Three Hundred Ninth Omnibus Objection (Substantive) of the Commonwealth of Puerto Rico to Claims that Are Partially Deficient and Partially Based on GDB Bonds* [ECF No. 16027] (the “Three Hundred Ninth Omnibus Objection”). In support of this Reply, the Commonwealth respectfully states as follows:

1. On March 12, 2021, the Oversight Board filed the Three Hundred Ninth Omnibus Objection seeking to disallow certain proofs of claim (the “Claims to Be Disallowed”), each of which purports to be based, in part, on an ownership interest in bonds issued by the Government Development Bank of Puerto Rico (“GDB”). Further, the Three Hundred Ninth Omnibus Objection seeks to disallow the remaining portions of the Claims to Be Disallowed because they purport to assert liabilities arising out of “Investments in Government Bonds,” “Government Bonds,” or other similar terms asserting liabilities associated with investments in government-issued bonds, but failed to provide information necessary to enable the Debtors to reconcile the claims, such as the CUSIP numbers or amounts of the specific bonds claimants intended to assert, and are, accordingly, deficient.

2. Any party who disputed the Three Hundred Ninth Omnibus Objection was required to file a response by 4:00 p.m. (Atlantic Standard Time) on April 14, 2021, in accordance with the Court-approved notice attached to the Three Hundred Ninth Omnibus Objection as Exhibit C, which was served in English and Spanish on the individual creditors subject to the Three Hundred Ninth Omnibus Objection, the U.S. Trustee, and the Master Service List (as defined by the *Fifteenth Amended Case Management Procedures* [ECF No. 17127-1]).

² PROMESA is codified at 48 U.S.C. §§ 2101–2241.

3. Flores Sánchez filed a proof of claim against the Commonwealth on March 14, 2018, and it was logged by Prime Clerk as Proof of Claim No. 3078 (the “Flores Sánchez Claim”). The Flores Sánchez Claim asserts liabilities based on an ownership interest in bonds issued by GDB in an amount of \$22,006.80. The Flores Sánchez Claim also attaches as supporting documentation a portion of Flores Sánchez’s UBS brokerage statement, which indicates Flores Sánchez also holds an ownership interest in bonds issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”). The Flores Sánchez Claim does not, however, provide information regarding the amount of ERS bonds held by Flores Sánchez.

4. On April 6, 2021, Flores Sánchez filed the Response. Therein, Flores Sánchez asserts liabilities against the Commonwealth arising from (i) GDB Bonds³ bearing CUSIP No. 745177FB6, in an amount of \$22,006.80, and (ii) bonds issued by ERS bearing CUSIP No. 29216MAF7, in an amount of \$41,808.00.

5. As set forth in the Three Hundred Ninth Omnibus Objection, the Flores Sánchez Claim seeks recovery for liabilities associated with GDB Bonds, which were released and extinguished pursuant to the transactions consummated through GDB’s Qualifying Modification. That Qualifying Modification provided for the issuance of new securities in exchange for the cancellation of the GDB Bonds and the extinguishment of the Commonwealth’s guarantee of certain GDB Bonds. As a result, the GDB Bonds no longer represent outstanding liabilities of the Commonwealth, and the portion of the Flores Sánchez Claim that asserts liabilities associated with GDB Bonds seeks recovery of amounts for which the Commonwealth is not liable.

6. According to the Response, the remaining portion of the Flores Sánchez Claim purports to assert an interest in bonds issued by ERS. ERS is a trust established by the

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Three Hundred Ninth Omnibus Objection.

Commonwealth in 1951 for the economic well-being of public employees. ERS is an agency of the government, separate and apart from the Commonwealth government and its other instrumentalities. *See* 3 L.P.R.A § 775. Purportedly pursuant to that certain *Pension Funding Bond Resolution*, adopted on January 24, 2008, and certain supplemental resolutions, ERS issued senior and subordinate pension funding bonds (the “ERS Bonds”) in the aggregate original principal amount of approximately \$2.9 billion. BNYM serves as the fiscal agent with respect to the ERS Bonds.

7. On behalf of the holders of ERS Bonds, BNYM filed a master proof of claim in the Commonwealth Title III Case, which was logged by Prime Clerk as Proof of Claim No. 32004 (the “ERS-CW Master Claim”). The ERS-CW Master Claim asserts claims against ERS based on, among other things, the enactment of Joint Resolution 188 and Law 106, which together created a “pay as you go” retirement system whereby pensioners are paid from the general funds of the Commonwealth, instead of Employers’ Contributions, which are alleged to be collateral for the Bonds.

8. Accordingly, to the extent the Flores Sánchez Claim purports to assert liabilities against the Commonwealth associated with ERS Bonds, those liabilities are duplicative of the ERS-CW Master Claim, which as described above was filed in the Commonwealth’s Title III case on behalf of the holders of ERS Bonds. Any failure to disallow the portion of the Flores Sánchez Claim asserting ERS bonds will result in Flores Sánchez potentially receiving an unwarranted double recovery against the Commonwealth, to the detriment of other stakeholders in the Commonwealth Title III case. Flores Sánchez will not be prejudiced by the disallowance of the portion of the Claim asserting ERS Bonds because the liabilities associated with that portion of the Claim are subsumed within the ERS-CW Master Claim.

9. Accordingly, the Commonwealth respectfully requests that the Court grant the Three Hundred Ninth Omnibus Objection and disallow the Flores Sánchez Claim, notwithstanding the Flores Sánchez Response.

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Dated: January 5, 2022
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer

Hermann D. Bauer

USDC No. 215205

Carla García-Benítez

USDC No. 203708

O'NEILL & BORGES LLC

250 Muñoz Rivera Ave., Suite 800

San Juan, PR 00918-1813

Tel: (787) 764-8181

Fax: (787) 753-8944

/s/ Brian S. Rosen

Martin J. Bienenstock (*pro hac vice*)

Brian S. Rosen (*pro hac vice*)

PROSKAUER ROSE LLP

Eleven Times Square

New York, NY 10036

Tel: (212) 969-3000

Fax: (212) 969-2900

*Attorneys for the Financial Oversight and
Management Board for Puerto Rico, as
representative for the Commonwealth of
Puerto Rico*